



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-562]

CERTAIN INCREMENTAL DENTAL POSITIONING ADJUSTMENT APPLIANCES AND METHODS OF PRODUCING SAME

NOTICE OF INSTITUTION OF FORMAL ENFORCEMENT PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the November 13, 2006, consent order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3061. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov/>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on February 15, 2006, based on a complaint filed by Align Technology, Inc. ("Align") of Santa Clara, California (now of San Jose, California). 71 *Fed.*

Reg. 7995-96. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of certain claims of U.S. Patent Nos. 6,685,469; 6,450,807 6,394,801; 6,398,548; 6,722,880 (“the ’880 patent”); 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511 (“the ’511 patent”); and 6,227,850. The complaint also alleged a violation of section 337 by reason of misappropriation of trade secrets. The Commission’s notice of investigation named OrthoClear, Inc. of San Francisco, California; OrthoClear Holdings, Inc. of Tortola, British Virgin Islands; and OrthoClear Pakistan Pvt, Ltd. of Lahore, Pakistan as respondents. On July 11, 2006, the ALJ granted Align’s motion to terminate the investigation as to the ’807 patent, which the Commission determined not to review. Order No. 10 (July 11, 2006), Notice of Non-Review (July 20, 2006).

On November 13, 2006, the Commission issued notice of its determination not to review the presiding administrative law judge’s initial determination granting Align’s and respondents’ joint motion to terminate the investigation as to respondents (and in its entirety) based on a consent order. The consent order prohibits the importing, offering for sale, and selling for importation in the United States incremental dental positioning adjustment appliances and any other articles that infringe the asserted patents or that contain or use the asserted trade secrets.

On March 1, 2012, Align filed a complaint for enforcement proceedings under Commission Rule 210.75. On March 22, 2012, Align filed a corrected complaint for enforcement. Align asserts that the successors and bound officers of the original respondents have violated the November 13, 2006, consent order by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States

incremental dental positioning adjustment appliances and other related products that infringe the '511 and '880 patents. On March 23, 2012, counsel for proposed respondent ClearCorrect Operating, LLC ("ClearCorrect USA") submitted a letter opposing institution of the enforcement proceeding. On March 28, 2012, Align responded to ClearCorrect USA's submission.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether ClearCorrect USA of Houston, Texas; ClearCorrect Pakistan (Private), Ltd. ("ClearCorrect Pakistan") of Lahore, Pakistan; and Mudassar Rathore, Waqas Wahab, Nadeem Arif, and Asim Waheed ("the bound officers"), all c/o ClearCorrect Pakistan, are in violation of the November 13, 2006, consent order issued in the investigation with respect to the '511 and '880 patents, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Align; (2) respondents ClearCorrect USA, ClearCorrect Pakistan, and the bound officers; and (3) the Office of Unfair Import Investigations.

The Commission notes that the threshold issue appears to be whether the accused digital datasets identified in the enforcement complaint that are allegedly imported into the United States are within the scope of the articles covered by the consent order. In instituting this enforcement proceeding, the Commission has not made any determination as to whether such digital datasets are within the scope of the consent order sought to be enforced. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination ("ID") under Commission rule 210.42(c), 19 C.F.R. § 210.42(c). The ID will become the Commission's final determination 45

days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission rules 210.43, 210.44, and 210.45, 19 C.F.R. §§ 210.43, 210.44, and 210.45.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75).

By order of the Commission.

James R. Holbein
Secretary to the Commission

Issued: April 25, 2012

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